

**REPORT - PLANNING COMMISSION MEETING
December 2, 2004**

Project Name and Number: Fremont/Walnut Plaza (PLN2004-00105)

Applicant: Harmesh Lal Modhara

Proposal: To consider a Finding for Site Plan and Architecture Approval for the development of a new 8,507 square foot retail/office building.

Recommended Action: Approve, based on findings and subject to conditions.

Location: 3870 Walnut Avenue

Assessor Parcel Number(s): 501-1110-034-00

Area: Lot—16,700 SF; Building Proposed—8,507 SF

Owner: Harmesh Lal Modhara

Agent of Applicant: Joseph A. Palafox, Architect

Consultant(s): Joseph A. Palafox, Architect, Joseph Palafox, AIA Architects
Charles Wilson, Landscape Architect, Wilson & Associates
Gregory Blaze, Civil Engineer, Lea & Sung Engineering Inc.
Taghi Manbeian, Geotechnical Engineer, Geotechnical Engineering Inc.

Environmental Review: This project is categorically exempt under CEQA Section 15303(c) as it relates to the construction of a new structure of less than 10,000 square feet in an urbanized area.

Existing General Plan: Central Business District

Existing Zoning: C-B-D, Central Business District

Existing Land Use: Vacant

Public Hearing Notice: A total of 11 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Fremont Boulevard and Walnut Avenue. The notices to owners and occupants were mailed on November 19, 2004. A Public Hearing Notice was delivered to The Argus on November 15, 2004 to be published by November 18, 2004.

Background and Previous Actions: In early 1981, the previous owner of the 16,700 square foot building pad (now a legal parcel) envisioned its development with a two-story retail/office building of approximately 22,896 square feet. The construction of the retail/office building was anticipated in a second phase that would have followed the construction of the restaurant now located at the southeast quadrant of the intersection of Walnut Avenue and Fremont Boulevard, known then as Emil Villa's "Hick'ry Pit". At that time, the building pad was located on a larger parcel of 86,046 square feet in size and included the Hick'ry Pit building (now "China Harbor") and entire parking lot area presently adjacent to the building pad. However, the development of the 22,896 retail/office building on the pad envisioned by the previous owner was not achieved. The building pad remained vacant, except for its occasional use as a pumpkin patch and a Christmas tree lot.

In March of 1989, the same previous owner requested and the City's Parcel Map Administrator approved Parcel Map 5561, a subdivision map which subdivided the 86,046 square foot parcel into two parcels: (i) a smaller, vacant building pad parcel of 16,700 square feet (the "project parcel"); and (ii) a larger parcel containing the Hick'ry Pit (the "Hick'ry Pit parcel") with the entire improved parking lot and landscaped areas. Reciprocal "Joint Access Easements" ("JAE") and

"Emergency Vehicle Access Easements" ("EVAE"), as well as a nonexclusive shared parking agreement between the smaller project parcel and the Hick'ry Pit parcel, were recorded with the parcel map. In addition, previously granted JAEs for the benefit of the commercial properties adjoining to the south, a "Landscaping and Pedestrian Easement" granted to the City, and "Public Utility Easement" ("PUE") were also retained and recorded with the new parcel map.

In November of 2003, the applicant, represented by his architect, Joseph Palofax, submitted a Finding for Site Plan and Architectural Approval (SPAA) application for the development of the current proposed retail/office building.

In October of 2004, the Planning Commission approved a Finding for Site Plan and Architectural Approval on the Hick'ry Pit parcel that allowed modifications to the former Hick'ry Pit restaurant building and parking lot. The approval allowed the development of a new outdoor dining area of approximately 1,100 square feet in size for a new Asian-fusion buffet restaurant, "China Harbor". In addition, new exterior modifications were also approved, along with new parking lot landscaping and exterior amenities. The front entrance would also be reoriented towards Walnut Avenue instead of its present orientation towards the parking lot. Staff understands that the Hick'ry Pit parcel (China Harbor) property owners are in the process of applying for building permits to complete the improvements for their restaurant.

Project Description: The project is a Finding for Site Plan and Architectural Approval (SPAA) of a new 8,507 square foot retail/office building on a vacant 16,700 square foot parcel. The proposed building design is one-story and is rectilinear in shape. General merchandising retail and administrative office uses are proposed. The new building would accommodate five new tenants with floor area spaces ranging from 1,000 square feet to 3,000 square feet. The new building would flank the east side of the existing driveway on Walnut Avenue, which also serves as access to the parking lot area for the China Harbor restaurant on the adjoining Hick'ry Pit parcel.

PROJECT ANALYSIS:

Site Planning: The project parcel is located on the southeast corner of the intersection of Walnut Avenue and Fremont Boulevard. The Walnut Avenue and Fremont Boulevard intersection is an integral part of the City's Central Business District and identified as one of the corners of the "South of Walnut" subdistricts in the Central Business District Concept Plan (CBD Plan). Similar to the adjoining Hick'ry Pit parcel, the CBD Plan unquestionably identifies the vacant project parcel as a "soft site". Based on the CBD Plan, the South of Walnut area "would continue to be characterized by essentially the same type of development as is already occurring in the area". As the CBD Plan focuses on other areas of the Central Business District to be more intensive with pedestrian-oriented development, the "South of Walnut" area is identified as an area where there is a need to retain some of the area for auto-oriented uses.

The project parcel is approximately 16,700 square feet in size and has 157 feet of frontage along Walnut Avenue. The parcels surrounding the project parcel are developed, as follows:

- To the east is "Aegis", a 29,382 square foot retirement facility on a 90,169 square foot parcel (0.33 Floor Area Ratio (FAR)) with 76 non-ambulatory senior citizen units is two-stories in a symmetrical, Mediterranean style with beige cement plaster exterior walls, Spanish concrete tiles on a hip and gable roof system;
- To the north is "Centre Business Park", a 57,500 square foot modern-looking office building and a two-story concrete parking garage of approximately 52,076 square feet on a 80,150 square foot parcel (0.72 FAR) that consists of precast concrete panels with grooved detailing running around the building with medium bronze windows;
- To the northwest is "US Bank", a savings and loan bank that is a one-story, 7,600 square foot building on a 35,161 square foot parcel (0.22 FAR) that consists of a brick façade and a very dominate, heavy fascia in a crème color; and,
- To the west is "China Harbor", a 7,019 square foot restaurant consisting of slumpstone walls and a standing seam metal ribbed roof on a 69,348 square foot parcel (0.10 FAR) recently approved by the Planning Commission for exterior renovations adjoining to the west and south.

The proposed new building is approximately 8,507 square feet in size and would be oriented on the 16,700 square foot parcel towards Walnut Avenue, five feet from a ten-foot wide pedestrian easement along that front property line. The proposed building would be at a 0.50 FAR. The building is designed to be pedestrian friendly by incorporating a sense of transparency with primary entrances facing the street. Much of the parking area would be behind and screened by the new building. While the building does not serve as an anchor to the street corner due to its location, the proposed site design attempts to address the southeast corner of Walnut Avenue and Fremont Boulevard, with the largest tenant space oriented towards the intersection.

Building Design: The proposed building is rectilinear in shape and is oriented towards Walnut Avenue. The architect stated that a more interesting palette of materials was selected to provide a building that is more visually pleasing at this location. The design of the walls mainly consists of bricks in an orange color at tower elements on Walnut Avenue; stucco walls in a lighter beige color on projecting walls with horizontal and vertical scoring; and, a darker gray color for recessed wall planes. Metal awnings in a dark gray color and canvas awnings in a dark bronze color are proposed to enhance the building's appearance. A brick round tower element with a suspended round metal awning, which serves as a vertical marker to anchor the beginning of the building, is proposed on the northwest corner of the building, skewed to face the intersection. The building form incorporates vertical tower elements and varying roof heights to break up the otherwise long and horizontal appearance of the building. In addition, wall planes are further articulated to reflect a small-scale street frontage rhythm with a high degree of visual transparency and recessed entries. Finally, wood corbels, metal trellises and tile inserts are added to the design to enhance its overall appearance.

General Plan Conformance: The existing General Plan land use designation for the project site is Central Business District. The anticipated general retail and administrative office uses for the new building are permitted in the Central Business District under Policy LU 2.4 [Central Business District] of the General Plan. All proposed projects in the Central Business District must undergo a review by the Planning Commission for Site Plan and Architectural Approval (SPPA). The SPAA process, under the authority of the Planning Commission, is undertaken due to the importance of the Central Business District because it is the goal of the Fremont General Plan to create a "well-defined, visually distinctive and vibrant commercial, governmental, and cultural center" in Fremont's downtown. Findings for project approval are proposed in Exhibit "B" enclosed.

Zoning Regulations: The project parcel is currently zoned CBD, Central Business District. The development regulations in the CBD are relatively flexible, allowing for zero-foot side and rear yard setbacks, with no limitation on building height. The permitted floor area ratio (FAR) for the parcel is 0.50 for the project site because it is located 0.80 miles from BART. [If the parcel were within 0.50 miles of BART, which is considered a reasonable walking distance, a higher FAR could be allowed.] The project, as proposed at a 0.50 FAR, is consistent with these regulations.

Parking: Based on the anticipated use of the new building for general retail or administrative offices, the required parking ratio is 1 parking space per 300 square feet of gross floor area, exclusive of storage areas. The new building is approximately 8,507 square feet in size and the floor plans for each tenant space is speculative at this time. In addition, currently no medical offices or eating establishments are proposed within the new building, which, while permitted in the CBD district, are considered more intensive uses mandating additional parking. In calculating the parking, the 1:300 ratio is thus applied to the project where a total of 28 parking spaces would be required. The proposed project conceptually provides 9 compact stalls and 6 standard stalls onsite, including one van-accessible parking stall for persons with disabilities. To fulfill the remainder of the minimum parking requirement, the applicant proposes to rely on a non-exclusive parking agreement with the adjoining Hick'ry Pit parcel that was previously created during the approval of Parcel Map 5561. Through re-striping and the creation of additional spaces on the project site, the total number of shared nonexclusive parking spaces would be approximately 112 spaces. Currently, a total of 70 parking spaces are required (1 parking space per 100 square feet of floor area) for the China Harbor restaurant and 28 parking spaces for the project as proposed. Based on the parking proposed and nonexclusive parking agreement, the project would comply with the minimum parking standard. The nonexclusive parking agreement executed by the previous property owners of the project parcel, EVB Company, recorded on May 9, 1989 with the County Recorder, would be maintained in perpetuity so long as the project parcel relies on parking provided in the agreement to meet its minimum required parking as established by the Fremont Municipal Code, as amended (Condition 11).

As mentioned above, the previous owners envisioned the future development of a office/retail building on the project parcel fronting Walnut Avenue, which was then legally part of a larger parcel containing the China Harbor restaurant and site. The second phase, however, was never developed. In 1989, at the time the parcel map was recorded, which created the smaller project parcel, a "Joint Parking Agreement" ("JPA") was also recorded to create shared parking with the Hick'ry Pit parcel. The established JPA benefited both parcels, Parcel 1 (the larger Hick'ry Pit (China Harbor) parcel) and Parcel 2 (the project parcel), of Parcel Map 5561.

In October of 2004, staff recommended and the Planning Commission approved a deferral of a portion of improvements to the existing parking area on the larger China Harbor site for a two-year period (with a one-year extension option). The intent of the deferral granted to the China Harbor property owners was to allow the owners of the project parcel to be partially responsible for the cost and completion of the improvements on the Hick'ry Pit (China Harbor) parcel parking lot because the current project, as proposed, relies on some of the parking spaces (13 spaces, estimate) on China Harbor site (Condition 11). As mentioned in the China Harbor staff report, staff determined that it was in the best interest of the City to consider and accept the recorded "Joint Parking Agreement" ("JPA") to partly meet the minimum required parking for the proposed new office/retail building. While staff encouraged that both property owners enter into a new parking agreement meeting the approval of the City Attorney, the parties were not able to reach agreement. The recorded JPA does not include provisions for maintenance, shared expenses or an equitable appropriation of the parking spaces. Staff has discussed with representatives of both parties that the City would require the parking lot to be improved to current City standards, and that a portion of the completion and expense of the parking lot improvements would be the responsibility of both property owners; however, such the project not proceed forward, the Hick'ry Pit parcel owners would be ultimately responsible for the improvements. The authority to require the improvement under the Deferred Improvement Agreement and the extent to which each property owner would be required to improve is under the authority of the Planning Director. The proposed landscape plan is delineated with a "limit-of-work" line to generally delineate the area (labeled as "Deferred Area" on China Harbor approved plans—PLN2004-00171) that each property owner would be responsible to improve once a building permit is issued. This line is only intended to generally indicate the limit-of-work that each property owner would be responsible at the time the building permit is issued.

While staff would have encouraged a more intensive or an increased floor area for the proposed development on the project parcel, particularly as it is located in the Central Business District and is within convenient walking distance to the BART Station, the project as proposed relies on a nonexclusive parking agreement, which, if a larger building is approved, may hinder the opportunity of the Hick'ry Pit parcel from additional future development or a change to a more intensive land use (e.g., a nightclub or other entertainment). As such, staff finds that the project as proposed at approximately a 0.50 floor area ratio is appropriate.

Waste Management: This project is subject to the provisions of the California Integrated Waste Management Act of 1989 (AB939), the City's Source Reduction and Recycling Element (1992), the Integrated Waste Management Ordinance (1995), and the Commercial/Industrial Recycling Plan (1997). These documents require that any new project for which a building permit application is submitted to include adequate, accessible, and convenient areas for collecting and loading trash and recyclable materials. A trash and recycling enclosure area is proposed, adjacent to the southeast corner of the new building. The details of the enclosure and ongoing maintenance would be required as proposed in the conditions of approval for the project (Condition 24).

DESIGN ANALYSIS:

Architecture: Based on the design guidelines of the Central Business Concept Plan, staff suggested to the applicant that the proposed design should be reflective of a contemporary vernacular in that its building size and architectural articulation at a pedestrian scale. According to the applicant, the project is designed in a contemporary appearance with the use of elements such as metal and canvas awnings, wood corbels, metal trellises, and brick and smooth stucco walls. Incorporating a variety of materials is an acceptable method to achieve a more desirable and interesting building. However, the extensive use of materials must be carefully considered, as it may result in a design which may appear cluttered or overwhelming. In staff's opinion, the elements proposed for the new building are generally acceptable; however, some of the elements need be reevaluated. Staff believes the applicant has produced a design that is nearly acceptable and in compliance with the guidelines of the CBD Plan; however, staff also believes that some refinements to

the proposed building architecture should be incorporated to further promote a pedestrian-oriented streetscape and architectural character for Walnut Avenue. Staff provides the following recommendations, which would be subject to staff review and approval during the Development Organization review process (Condition 12):

1. The metal trellis at the center tower on the west elevation should be eliminated, as it would be inconsistent with the application of the element at other location on the building (Condition 13).
2. The ornate-looking wood corbels are inconsistent with other metal elements, i.e., trellises and awnings, on the building and should instead be changed to simplified metal brackets, interspersed below the cornice line to a lesser degree (Condition 14).
3. The de-emphasized front recessed entrances proposed for "Retail 5" and Retail "4" tenant spaces are inappropriate and should be relocated and recessed underneath the tower elements. A single door with sidelights consistent with the dark bronze window storefront system for each tenant space should be appropriately located under the tower element (Condition 15).
4. All wall lighting fixtures or sconces should be of high quality, decorative lighting fixtures with concealed lighting elements, instead of the oval wall sconces proposed (Condition 16).
5. The parapet at the round tower element should be completed so the backside of the tower parapet is not exposed from the parking area. The ceiling height should be increased within the tower and glazing extended to the floor for consistency with the storefront window system proposed for the building (Condition 17).
6. The building facades should be reevaluated so that all future building signs can be appropriately and architecturally integrated with the proposed building design in terms of size, shape, color, texture, and lighting (Condition 18).
7. All metal awnings should be in a dark bronze color instead of the dark gray color proposed (Condition 19).
8. The brick element applied to the towers should either be a rich red color or alternatively a white/gray color (Condition 20).

Staff will continue to work with the applicant on these refinements and any design direction received from the Planning Commission. It should be noted, however, that the applicant's architect has been working with staff on the project to reach an acceptable design (previous proposals included as an informational enclosure). As previously mentioned in the "Site Planning" section of this report, the design of buildings surrounding the project parcel vary greatly. None of these surrounding buildings are similar in appearance, except for the two Mediterranean style senior living facilities, the "Carlton" and "Aegis" retirement communities.

Landscaping: The CBD Plan envisions that the 104-foot right-of-way of Walnut Avenue would later be designed to accommodate on-street parking and bike lanes, as well as two lanes of traffic in each direction. In the center of the "parkway collector" would be a planted median with landscaping and trees, tapering at intersections for dedicated left hand turn lanes. The walkways on both sides of the road would be at least ten feet in width with street trees in grates. Finally, buildings would be built to the street property lines.

The project parcel has 157 feet of frontage on Walnut Avenue. Based on the CBD plan, pedestrian-oriented walkways are encouraged to "enhance the pedestrian circulation", as the district is distinctly made up of "superblocks". With this intent in mind, the applicant's architect proposes special paving to maintain a sufficiently sized walkway on Walnut Avenue. The special paving treatment would connect to the existing 8-foot wide meandering public sidewalk. The two existing Celtis (Hackberry) trees on Walnut Avenue in front of the proposed building in the large existing planter would be preserved, while the streetscape would be further enhanced with a new street planter containing a new Celtis tree flanking the driveway entrance on Walnut Avenue. Foundation shrubs are proposed around the entire building as well as within plant containers at the entrances. The applicant would also be required to partially improve the China Harbor parking area as generally delineated on Exhibit "A" and previously discussed under the "Parking" analysis section of this report.

The applicant would also be required to work with the adjoining China Harbor site owners to execute and record all necessary landscape easements (Condition 22). Proposed in front of the largest tenant space would be a radial-scored concrete pattern with tile paved banding. Finally, a public art piece would be proximate to the front entrance of the largest tenant (Condition 21), and new high quality benches and a bike rack area would be required to be incorporated in the design (Condition 23).

While staff is of opinion that the building should have been moved closer towards the property line on Walnut Avenue, the proposal is acceptable because it would be consistent with existing streetscape appearance of Walnut Avenue. The 10-foot wide pedestrian easement adjacent to the front property line also hindered the ability to move the building closer to the street. In addition, requiring trees in grates consistent with the CBD plan for the frontage at this time would require the removal of two healthy Celtis trees and would be different in appearance from the existing streetscape appearance.

City Landscape Architect Review of Proposed Tree Removal and Preservation: The portion of the site associated with this development contains 5 mature trees and 12 newly planted trees that were part of a previously approved project as shown on the "Preliminary Landscape Plan" by Wilson & Associates Landscape Architects dated October 25, 2004. A total of 8 of the newly planted trees are designated for removal due to their conflict with the proposed development. These trees have a Diameter Breast Height (DBH) of less than 6 inches. All other trees are designated for preservation. The removal of the 8 trees will have little effect on City's urban forest due to their small size and thus mitigation is not required. The project as proposed is consistent with the provisions of the Tree Preservation Ordinance.

View Impacts: The project parcel has frontage on the Walnut Avenue. "View corridors" were established by the CBD Plan to preserve the views of the hillside from the Central Business District. The "Walnut Avenue View Corridor" as described by the CBD Plan extends from Argonaut Way to the edge of the CBD boundary. The proposed project does not impact this view corridor.

ENGINEERING ANALYSIS:

Circulation/Access Analysis: The project site and a neighboring restaurant are located on the eastern corner of the Walnut Avenue and Fremont Boulevard intersection. An existing driveway on each frontage provides access to a shared parking lot. Both driveways are limited to right turns in and out due to existing raised medians in both streets. Walnut Avenue street improvements, which front the proposed retail building, were installed as part of a City local improvement district. Pedestrian access is provided by concrete walkways that surround the proposed retail building and connect to the existing meandering sidewalk on Walnut Avenue.

Grading/Topography: The project site has frontage on Walnut Avenue, approximately 230 feet northeast of the Walnut Avenue and Fremont Boulevard intersection. The site is currently vacant and surrounded by improvements, both public and private. Because the proposed building covers a large portion of the parcel, conforming the proposed development to the surrounding improvements would be important.

The existing ground elevation drops approximately 1.5 feet from the back of the parcel to the existing sidewalk on Walnut Avenue. This elevation difference must be taken into account with the building and parking lot design. In order to create constant finished floor elevations and provide appropriate thresholds at doors, the project may have to modify the existing pavement elevations in the parking lot. A grading and drainage plan would be required and would be subject to staff approval during Development Organization review.

Urban Runoff Clean Water Program: The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. The applicant would be required to comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board. Conditions are proposed to reflect these requirements.

ENVIRONMENTAL ANALYSIS: This project is categorically exempt under CEQA Section 15303(c) as it relates to the construction of a new structure of less than 10,000 square feet in an urbanized area.

Response from Agencies and Organizations: No responses have been received to date.

Development Impact Fees: This project will be subject to Citywide Development Impact Fees. These fees include fees for fire protection, capital facilities and traffic impact. These fees shall be calculated at the fee rates in effect at the time of building permit issuance (Condition 12).

ENCLOSURES: Exhibit "A" (Site Plan, Floor Plan, Architectural Elevations, Conceptual Landscape Plan, Boundary and Site Survey)
 Exhibit "B" (Findings and Conditions of Approval)

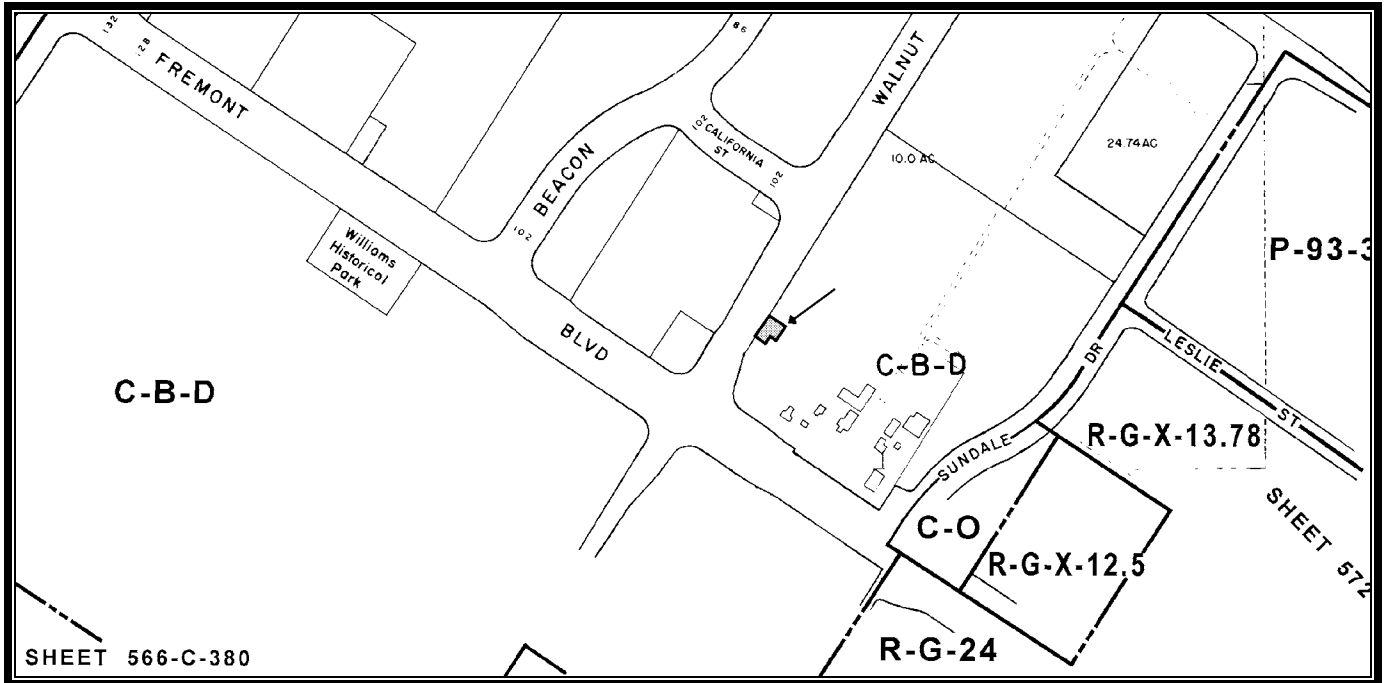
 Informational 1 (Previous Building Design Submittals)

EXHIBITS: Exhibit "A" (Site Plan, Floor Plan, Architectural Elevations, Conceptual Landscape Plan, Boundary and Site Survey)
 Exhibit "B" (Findings and Conditions of Approval)
 Exhibit "C" (Color and Material Sample Board)

Recommended Actions:

1. Hold public hearing.
2. Find the proposed project is categorically exempt under CEQA Section 15303(c) as it relates to the construction of a new structure of less than 10,000 square feet in an urbanized area.
3. Find that the proposed project is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report. The project conforms to the goals and policies as discussed in the staff report and Findings of Exhibit "B" herewith.
4. Approve PLN2004-00105, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

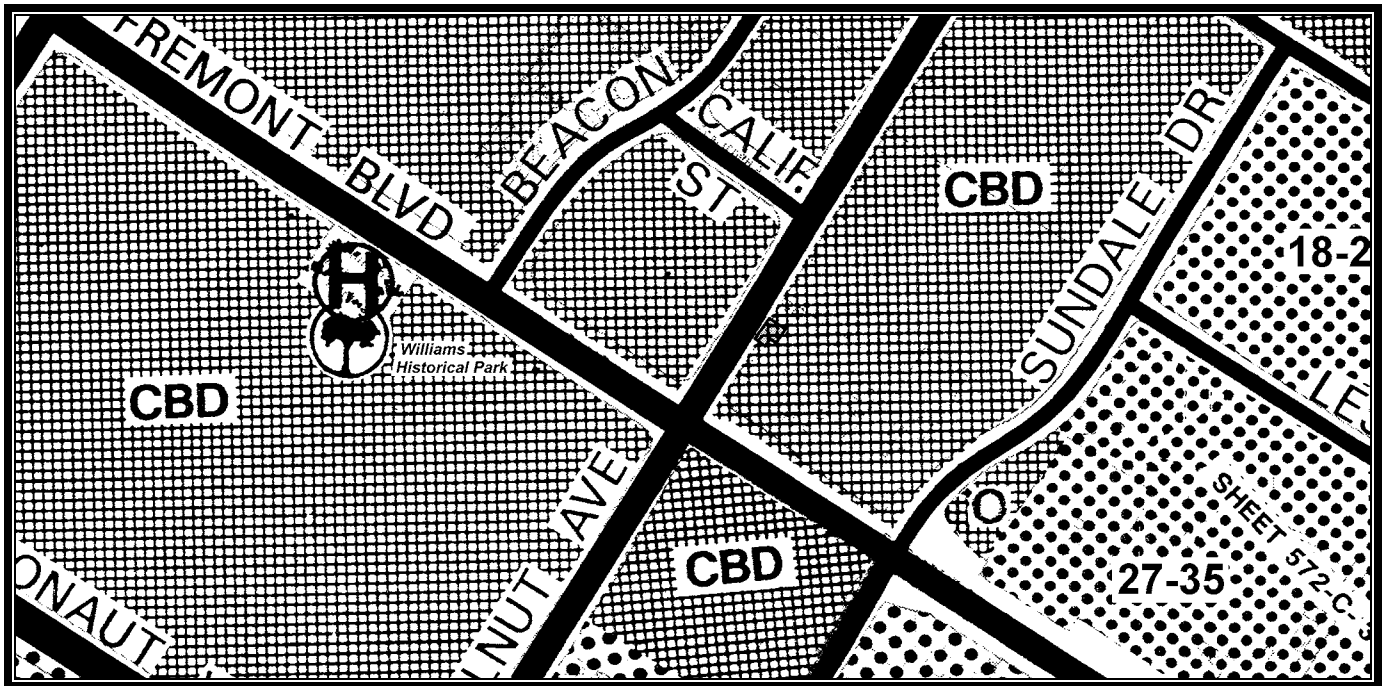


EXHIBIT "B"
PLN2004-00105
(Finding for Site Plan and Architectural Approval)
Fremont/Walnut Plaza (APN# 501-1110-034-00)
Planning Commission Meeting of December 2, 2004

Findings:

The findings below are made on the basis of information contained in the staff report and testimony at the public hearing dated December 2, 2004 in conformance with the requirements of Section 8-21206(c) of the Zoning Ordinance of the Fremont Municipal Code (FMC), which requires a Planning Commission review of the site plan and architecture for all proposed buildings in the C-B-D, incorporated herein:

- A. The proposed development properly relates to essential on-site facilities such as off-street parking, loading and unloading areas, traffic circulation and access points because the project in conformance with the conditions of approval would comply with the development regulations and policies of the Central Business District and Fremont Municipal Code in general. This is accomplished through an existing offsite parking agreement with an adjoining lot and proposed new off-street parking and loading and unloading areas.
- B. The proposed development properly relates to public agency service requirements and opportunities, especially emergency public safety services. The existing joint access driveway and the layout of the existing on-site circulation and proposed additional parking spaces satisfy those public service, safety and emergency needs.
- C. The proposed development is visually, physically and functionally compatible with neighboring uses and neighborhood characteristics. The proposed building in a modern design and proposed retail/office uses, which are permitted in the Central Business District, would visually, physically and functionally be compatible with the existing varied architectural character and streetscape appearance of Walnut Avenue.
- D. The proposed development includes site facilities that provide an attractive environment for the occupants of the property to be developed, including public art. The proposed project has appropriate foundation landscaping provided around the perimeter of the building to make the building environment compatible with the adjacent existing buildings. In addition, wide special paved areas provide future opportunities for outdoor seating, particularly as parking becomes more available.

General Conditions:

General Conditions (Must be satisfied on ongoing basis)

- 1. Approval of PLN 2004-00105 for an 8,507 square foot office/retail building shall conform to Exhibit "A" (Site Plan, Floor Plan, Architectural Elevations, Conceptual Landscape Plan, Boundary and Site Survey). The proposed plans submitted to the City's Development Organization shall substantially conform to the plans submitted for this application, except as modified herein.
- 2. Any minor modification to the project as depicted in Exhibit "A" shall be subject to review and approval of the Planning Director if such modifications are in keeping with the intent of the original approval, unless the Director finds that such modification warrants review and approval by the Planning Commission.
- 3. The structure shall have an automatic fire extinguishing system subject to the review and approval of the Fremont Fire Marshall through the Development Organization review process.
- 4. The applicant shall be required to recycle all glass and plastic containers generated by the uses located within the building.

5. The property owner is responsible for litter control and for sweeping of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged to the storm drain.
6. In accordance with the Alameda Countywide NPDES Municipal Stormwater Permit, Order R2-2003-0021, NPDES Permit No. CAS0029831, the property owners shall enter into a maintenance agreement for the long-term operation and maintenance of on-site stormwater treatment measures. The agreement shall be recorded against and run with the land.
7. The applicant shall provide and maintain a functional system to control erosion and siltation.
8. The property owner shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.
9. Food service facilities (including restaurants and grocery stores) if proposed in the future when parking is adequately provided shall have a sink or other floor mat, container, and equipment cleaning area, which is connected to a grease interceptor prior to discharging to the sanitary sewer system. The cleaning area shall be large enough to clean the largest mat or piece of equipment to be cleaned. The cleaning area shall be indoors or in a roofed area outdoors; both areas must be plumbed to the sanitary sewer.
10. The applicant or successor in interest shall conform to the conditions of approval herein and all other applicable ordinances of the Fremont Municipal Code.
11. The nonexclusive parking agreement executed by the previous property owners of the project parcel, EVB Company, recorded on May 9, 1989 with the County Recorder shall be maintained in perpetuity so long as the project parcel relies on parking provided in the agreement to meet its minimum required parking as established by the Fremont Municipal Code, as amended.

Prior to Issuance of Building Permits, the following conditions must be satisfied:

Planning Division Requirements:

12. Applicant shall submit appropriate plans and documents to City's Development Organization for review to insure conformance with conditions approved under this approval, and other relevant codes, policies and requirements of the Fremont Municipal Code. Prior to issuance of a building permit, all Development Impact Fees assessed shall be paid in full.
13. The metal trellis at the center tower on the west elevation shall be eliminated, as it would be inconsistent with the application of the element at other location on the building.
14. The ornate-looking wood corbels are inconsistent with other metal elements, i.e., trellises and awnings, on the building and shall instead be changed to simplified metal brackets, interspersed below the cornice line to a lesser degree.
15. The de-emphasized front recessed entrances proposed for "Retail 5" and Retail "4" tenant spaces are inappropriate and shall be relocated and recessed underneath the tower elements. A single door with sidelights consistent with the dark bronze window storefront system for each tenant space shall be appropriately recessed and located under the tower element.
16. All wall lighting fixtures or sconces shall be of high quality, decorative lighting fixtures with concealed lighting elements, instead of the oval wall sconces proposed.

17. The parapet at the round tower element shall be completed so that the backside of the tower parapet is not exposed as viewed from the parking area. The ceiling height shall be increased within the tower and glazing extended to the floor for consistency with the storefront window system proposed for the building.
18. The applicant's architect shall continue to work with staff on the building facades to ensure that all future building signage can be appropriately and architecturally integrated on the facades of the proposed building design in terms of size, shape, color, texture, and lighting.
19. All metal awnings shall be in a dark bronze color instead of the dark gray color proposed.
20. The brick element applied to the towers shall either be a rich red color or alternatively a white/gray color.
21. A contemporary piece of artwork valued at least or near one (1) percent of the total cost of the building construction (material and labor) shall be installed in the area adjacent to the front entrance at the round tower element. Such artwork and the actual cost of the artwork and installation need not exceed one (1) percent of the value of the building, and shall be subject to the review and approval of the Planning Director during the Development Organization review process of the project.
22. The applicant shall work with the adjoining parcel owner, currently known as a "China Harbor" restaurant site, to execute and record all necessary landscape easements to enhance the appearance of the parking lot area. The applicant shall also work with the adjoining lot owner to complete pay for the parking lot improvements conceptually shown in Exhibit "A" in the area generally delineated by the "limit-of-work line".
23. All exterior amenities shall consist of high quality materials. The applicant's architect shall work with staff to incorporate benches and a bicycle rack area. The benches shall consist of cast aluminum with rugged steel frames to provide exceptional durability and a highly contemporary refined look. All exterior amenities shall be designed and built to meet the rigors of an urban environment.
24. Details of the trash enclosure shall be provided. The design of the trash enclosure shall be compatible with the proposed design of the building and shall contain a fully covered roof trellis.

Building Department Requirements:

25. All improvements to the project structure and site necessary for compliance with local, state and federal building and fire code requirements.

Fire Department Requirements:

26. The applicant shall meet all requirements in the 2001 California Fire Code and all local mandated fire code requirements adopted by City Council under Ordinance 2485.
27. The applicant shall install an automatic fire sprinkler system in the building for fire protection purposes. Plan, specifications, equipment lists and calculations for the required sprinkler system must be submitted to the Fremont Fire Department Authority and Building Department for review and approval prior to installation. A separate plan review fee is required. Standard Required: N.F.P.A. 13.
28. All Automatic Fire Suppression Systems Fire Department Connections shall have the following installed/provided:
 - a. Address placard installed at the connection.
 - b. Knox Cap installed on every inlet.

Engineering Requirements:

29. The site circulation and parking shall be reviewed for conformance with Title VIII, Chapter 2, Article 20, of the Fremont Municipal Code during Development Organization. Site circulation and parking is subject to staff review and approval.
30. Applicant shall provide for a functional drainage system subject to approval of the City during Development Organization review.
31. Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grades are to be a minimum of 0.75 feet above the hydraulic grade line.
32. Improvements within the public right-of-way shall conform to City standards. The applicant shall apply for and obtain an encroachment permit for all improvements within the public right-of-way. The encroachment permit shall be obtained prior to issuance of the building permit.
33. The applicant shall provide for a functional system to control erosion and siltation during and after construction subject to review and approval by the City Engineer during Development Organization. A separate plan shall be submitted for this purpose.
34. The project plans shall include storm water measures for the operation and maintenance of the project for the review and approval of the City Engineer. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on site that effectively prohibit the entry of pollutants into storm water runoff.
35. The developer shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.
36. The developer is responsible for ensuring that all contractors are aware of all storm water quality measures and that such measures are implemented. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.
37. All paved outdoor storage areas must be designed to reduce and limit the potential for runoff of contact pollutants. Bulk materials stored outdoors may need to be covered as determined by the City Engineer.
38. Landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to stormwater pollution.
39. Structures shall be designed to discourage the occurrence and entry of pests into buildings, thus minimizing the need for pesticides. For example, dumpster areas should be located away from occupied buildings, and building foundation vents shall be covered with screens.
40. Where feasible, landscaping shall be designed and operated to treat stormwater runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.
41. Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.
42. Proper maintenance of landscaping, with minimal pesticide use, shall be the responsibility of the property owner.

43. Food service facilities (including restaurants and grocery stores), if any, shall have a sink or other floor mat, container, and equipment cleaning area, which are connected to a grease interceptor prior to discharging to the sanitary sewer system. The cleaning area shall be large enough to clean the largest mat or piece of equipment to be cleaned. The cleaning area shall be indoors or in a roofed area outdoors; both areas must be plumbed to the sanitary sewer.
44. Outdoor cleaning areas shall be designed to prevent stormwater run-on from entering the sanitary sewer and to prevent stormwater run-off from carrying pollutants to the storm drain. Signs shall be posted indicating that all food service equipment washing activities shall be conducted in this area. The applicant shall contact Union Sanitary District for specific connection and discharge requirements.
45. The project shall provide a roofed and enclosed area for dumpsters and recycling containers. The area shall be designed to prevent water run-on to the area and runoff from the area and to contain litter and trash, so that it is not dispersed by the wind or runoff during waste removal.
46. Runoff from food service areas, trash enclosures, recycling areas, and/or food compactor enclosures or similar facilities shall not discharge to the storm drain system. Trash enclosure areas shall be designed to avoid run-on to the trash enclosure area. Any drains installed in or beneath dumpsters, compactors, and tallow bin areas serving food service facilities shall be connected to the sanitary sewer. The applicant shall contact Union Sanitary District for specific connection and discharge requirements.
47. Fire sprinkler test water shall be drained to the sanitary sewer system (with approval from Union Sanitary District or drain to landscaped areas where feasible).
48. For air conditioning units, air conditioning condensate should be directed to landscaped areas or alternatively connected to the sanitary sewer system after obtaining permission from Union Sanitary District. Any anti-algal or descaling agents must be properly disposed of. Any air conditioning condensate that discharges to land without flowing to a storm drain may be subject to the requirements of the State Water Resources Control Board's (SWRCB) Statewide General Waste Discharge Requirements (WDRs) for Discharges to Land with a Low Threat to Water Quality.
49. Roof drains shall discharge and drain away from the building foundation to an unpaved area wherever practicable.
50. Roof top equipment (other than that producing air conditioning condensate) shall drain to the sanitary sewer, or be covered and have no discharge to the storm drain. The applicant shall contact the Union Sanitary District for specific connection and discharge requirements.

Landscaping Requirements:

51. Trees to be preserved are those called out to remain on the "Preliminary Landscape Plan" drawing. The applicant shall work with staff during the Development Organization review to ensure that tree preservation measures are developed so as to ensure the trees health in accordance with the Tree Preservation Requirements of the Landscape Development Requirements and Policies (LDRP). This may require modifications to curbs, paving, grading and utility location.
52. All planting areas containing trees shall be free of all Utility Structures (including light standards). Clearances between Utilities and Trees shall conform to SD-34 City Standard Street Tree Clearances.
53. A landscape plan shall be submitted to the Development Organization or both, as directed by the City Landscape Architect, for review and approval, indicating full details regarding (1) paving materials and textures of walkways and paved pedestrian areas, (2) lighting of walkways and pedestrian areas with low intensity non-glare type fixtures, (3) screening of driveways and parking areas, and (4) landscaping of site and open areas. As part of the landscape plans the applicant shall submit:

- a. An underground irrigation plan.
 - b. Weed control specifications.
 - c. A lighting plan for the illumination of the building, pedestrian and parking areas. Type of lighting fixtures, their heights, intensity and direction shall be clearly indicated.
 - d. Construction details of raised planters, walkways, paths, benches, walls, fences, trellises, public art and other architectural features as appropriate to the project.
54. Applicant shall provide (1) 24" Box *Celtis australis* street trees in addition to keeping the two existing street trees along Walnut Blvd. within City Right of Way. The trees shall be planted in accordance with detail SD-34.
55. Applicant shall provide accent paving at the main entrance at the North West corner of the building using contrasting concrete bands with tile pavers as shown on the "Preliminary Landscape Plan" subject to staff approval during the Development Organization review.
56. Per FMC 8-22009, parking lots require one (1) tree per every ten (10) parking spaces evenly distributed within the parking area. The applicant shall relocate the proposed *Celtis australis* tree along the East Elevation of the building to a new landscaped finger immediately adjacent. The landscaped finger shall be free of inorganic material with a minimum 6' wide area in any direction (i.e., interior planter width, not including curbs, to be minimum 6') and no less than 48 square feet of soil surface area overall. This may require the removal of a parking space.
57. Per section 8-22009(FMC) a 10' wide landscaped area (free from inorganic material) is required between all property lines and parking and circulation areas adjacent residential properties. Applicant shall modify existing parking lot to provide a minimum 6' wide landscaped areas (free from inorganic material) along all property boundaries.
58. All provisions of the City of Fremont Landscape Development Requirements and Policies (LDRP) shall apply to this project unless otherwise approved by the City Landscape Architect.

During Construction:

Planning Requirements:

59. Construction activities shall be limited to the following hours of operation:

7 a.m. to 7 p.m. Monday through Friday
9 a.m. to 6 p.m. Saturday
No construction activities allowed on Sunday

Failure to comply with the above mentioned hours of operation would result in the withholding of inspections.

Landscaping Department Requirements:

60. Existing trees to remain shall not be impacted by any grading operations. Appropriate tree protection measures shall be in place in accordance with City's Landscaping Development & Policies prior to commencing any grading or construction work. Trees to be preserved are those called out to remain on the "Preliminary Landscape Plan" drawing.

Environmental Services Department Requirements:

61. All public and private storm drain inlets are to be stenciled "No Dumping – Drains to Bay" using stencils purchased from the Alameda County Urban Runoff Clean Water Program at 951 Turner Court, Hayward, California. Color and type of paint to be as approved by the City Engineer.
62. The proposed development shall provide waste and recycling enclosures that shall be made accessible to the City's waste management contractor. The location and accessibility of the trash and recycling enclosures shall be subject to the review and approval during Development Organization. All recycling and waste collection areas are required to be screened from adjacent properties and public rights of way (FMC Section 8-22155). The trash enclosure must be built to screen the containers from public view and to insure the containers are on a concrete pad. Refer to the Waste Handling Requirements for enclosure construction guidelines.
63. Construction and demolition debris management: Recycling of construction and demolition debris is an important environmental concern to the City of Fremont in meeting the City's goal of 75% waste diversion by 2010 (Fremont Commercial/ Industrial Recycling Plan, adopted April 1999). This development will require the applicant to file a Project Waste Handling Plan and follow-up documentation, since it will generate debris from the removal of the existing structure and from the construction of a new building, where some demolition and construction debris can be recycled. This material may be recycled through any recycling company licensed to do business in Fremont, and recycling may cost less than disposing of the material as municipal solid waste. (See City forms included with the Fremont Waste Handling Requirements.
64. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.